

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

No. 1277

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### Introduced by Assembly Member Benoit

February 23, 2007

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An act to amend Section ~~24357~~ 25106 of the Revenue and Taxation Code, relating to taxation.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1277, as amended, Benoit. Corporate tax: ~~net income; charitable contributions; combined reporting; dividend elimination.~~

The Corporation Tax Law ~~allows various deductions in computing the income that is subject to the taxes imposed by that law, including a deduction for a charitable contribution made by a taxpayer during the taxable year, as provided~~ imposes taxes measured by income and, in the case of a group of corporations that conduct a unitary business, as specified, generally requires or, in some cases, permits the members of the group to compute their tax by utilizing the “combined report” approach, as defined. Existing law provides that dividends paid by one member of a unitary group to another member of that group may be eliminated from the recipient corporation’s taxable income, provided that the dividends are paid out of earnings and profits accumulated by the payor when the payor and recipient were members of the same combined unitary group, as specified.

This bill would ~~make technical, nonsubstantive changes to the provision allowing a deduction for a charitable contribution, as specified~~ clarify that the dividend elimination, as provided, is allowed regardless of whether the payor and payee are taxpayer members of the California combined unitary group return, or whether the payor or payee had

*previously filed California tax returns, as long as the payor and payee filed as members of a comparable unitary business outside of this state when the earnings and profits from which the dividends were paid arose. This bill would also specify that the dividend elimination provisions apply to dividends paid out of the specified income, as provided, by a member of a combined unitary group to a newly formed member, as defined.*

*This bill would declare that these changes are declaratory of existing law.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 25106 of the Revenue and Taxation Code*  
2     *is amended to read:*

3     25106. (a) (1) *In any case in which the ~~tax~~ income of a*  
4     *corporation is or has been determined under this chapter, or*  
5     *comparable rules of any other state if the corporation was not*  
6     *subject to tax in this state, with reference to the income and*  
7     *apportionment factors of ~~another corporation~~ one or more other*  
8     *corporations with which it is doing or has done a unitary business,*  
9     *all dividends paid by one to another of any of those corporations*  
10    *shall, to the extent those dividends are paid out of the income*  
11    *previously described of the unitary business, be eliminated from*  
12    *the income of the recipient and, except for purposes of applying*  
13    *Section 24345, shall not be taken into account under Section 24344*  
14    *or in any other manner in determining the tax of any member of*  
15    *the unitary group.*

16    (2) (A) *For purposes of this section, the dividends described*  
17    *in paragraph (1) include dividends paid out of the income*  
18    *previously described of the unitary business by a member of the*  
19    *unitary group to a corporation that is a member of the group but*  
20    *was formed subsequent to the accrual of that income, if the*  
21    *recipient corporation was part of the unitary group during the*  
22    *period from its formation to the receipt of dividends.*

23    (B) *The Franchise Tax Board may deny any dividend elimination*  
24    *for the dividends described in this paragraph if the board*  
25    *determines that a transaction is entered into or structured with a*  
26    *principal purpose of evading the tax imposed by this part.*

1     (b) *The Franchise Tax Board may prescribe any regulations*  
2 *that may be necessary or appropriate to carry out the purpose of*  
3 *this section, which is to prevent taxation of dividends received by*  
4 *a member of a unitary group where those dividends were paid*  
5 *from the earnings and profits of another member of the same*  
6 *unitary group.*

7     (c) *Except as provided in paragraph (2), the amendments made*  
8 *by the act adding this subdivision shall apply to taxable years*  
9 *beginning on or after January 1, 2007.*

10     SEC. 2. (a) *The Legislature finds and declares that the*  
11 *amendments made to Section 25106 of the Revenue and Taxation*  
12 *Code by Section 1 of this act do not constitute a change in, but is*  
13 *declaratory of, existing law. It is the intent of the Legislature that*  
14 *no inference be drawn from those amendments as to whether, for*  
15 *any taxable year beginning before January 1, 2007, dividends*  
16 *received by a corporation are eligible for elimination under Section*  
17 *25106 of the Revenue and Taxation Code if the corporation was*  
18 *formed subsequent to the accrual of earnings and profits from*  
19 *which the dividends are paid.*

20     ~~SECTION 1.—Section 24357 of the Revenue and Taxation Code~~  
21 ~~is amended to read:~~

22     ~~24357. (a) There is allowed as a deduction any charitable~~  
23 ~~contribution (as defined in Section 24359) payment of which is~~  
24 ~~made during the taxable year. A charitable contribution is allowed~~  
25 ~~as a deduction only if verified under regulations prescribed by the~~  
26 ~~Franchise Tax Board.~~

27     ~~(b) (1) In the case of a corporation reporting its income on the~~  
28 ~~accrual basis, the corporation may elect to treat the contribution~~  
29 ~~as paid during that taxable year if both of the following occur:~~

30     ~~(A) The board of directors authorizes a charitable contribution~~  
31 ~~during the taxable year.~~

32     ~~(B) Payment of the contribution is made after the close of that~~  
33 ~~taxable year and on or before the 15th day of the third month~~  
34 ~~following the close of the taxable year.~~

35     ~~(2) The election allowed by paragraph (1) may be made only~~  
36 ~~at the time of the filing of the return for the taxable year, and shall~~  
37 ~~be signified in the manner as the Franchise Tax Board shall by~~  
38 ~~regulations prescribe.~~

39     ~~(c) For purposes of this section, payment of a charitable~~  
40 ~~contribution that consists of a future interest in tangible personal~~

1 property shall be treated as made only when all intervening interests  
2 in, and rights to the actual possession or enjoyment of, the property  
3 have expired or are held by persons other than the taxpayer or  
4 those standing in a relationship to the taxpayer described in Section  
5 24428. For purposes of the preceding sentence, a fixture which is  
6 intended to be severed from the real property shall be treated as  
7 tangible personal property.

8 (d) ~~No deduction is allowed under this section for traveling~~  
9 ~~expenses (including amounts expended for meals and lodging)~~  
10 ~~while away from home, whether paid directly or by reimbursement,~~  
11 ~~unless there is no significant element of personal pleasure,~~  
12 ~~recreation, or vacation in that travel.~~

13 (e) ~~(1) Section 170(f)(8) of the Internal Revenue Code, relating~~  
14 ~~to substantiation requirement for certain contributions, shall apply,~~  
15 ~~except as otherwise provided.~~

16 ~~(2) No deduction shall be denied under Section 170(f)(8) of the~~  
17 ~~Internal Revenue Code, relating to substantiation requirement for~~  
18 ~~certain contributions, upon a showing that the requirements in~~  
19 ~~Section 170(f)(8) of the Internal Revenue Code have been met~~  
20 ~~with respect to that contribution for federal purposes.~~

21 (f) ~~Section 170(f)(9) of the Internal Revenue Code, relating to~~  
22 ~~the denial of the deduction for lobbying activities shall apply,~~  
23 ~~except as otherwise provided.~~

24 (g) ~~(1) Notwithstanding any other provision of law to the~~  
25 ~~contrary, for purposes of this section and Section 24341, Section~~  
26 ~~170 of the Internal Revenue Code, as amended by Public Law~~  
27 ~~109-1, shall be applied to allow a taxpayer to elect to treat any~~  
28 ~~contribution described in paragraph (2) made in January 2005, as~~  
29 ~~if that contribution was made on December 31, 2004, and not in~~  
30 ~~January 2005.~~

31 ~~(2) A contribution is described in this paragraph if that~~  
32 ~~contribution is a cash contribution made for the relief of victims~~  
33 ~~in areas affected by the December 26, 2004, Indian Ocean tsunami~~  
34 ~~for which a charitable contribution deduction is allowable under~~  
35 ~~this section.~~